

MEMORANDUM

July 21, 1970

To: Alexander Holtzman

From: Stuart E. Berelson

This memo is to set forth briefly certain of the pertinent criteria which are required (1) for a contribution to certain types of organizations to be deductible by the donor as a "charitable contribution" for Federal income tax purposes, and (2) in order for the organization receiving such contribution to be exempt from the payment of Federal income taxes.

(1) A "charitable contribution" includes, among other things, a contribution or gift for the use generally in the United States, its possessions and territories by a corporation, trust or foundation which is:

(a) created in the United States, its possessions or territories,

(b) organized and operated exclusively for religious, charitable, scientific, literary or educational purposes,

(c) no part of the net earnings of which inures to the benefit of any private shareholder or individual, and;

(d) no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and which does

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not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

The definitions of the foregoing are amplified under the applicable regulations, which cover the eligibility of exemption from Federal taxes by these organizations.

(2) An organization which claims exemption from Federal income taxes on the basis that it was organized for religious, charitable, scientific, testing for public safety, literary or educational purposes, must generally, among other things, qualify under the same restrictions previously set forth in (a) through (d) with respect to recipients of "charitable contributions".

An organization claiming tax exemption must file an appropriate form with the Internal Revenue Service (Form 1023 in the case of the aforementioned organizations) and once approval is given, may rely on such approval, provided there are no substantial changes in the organization's character, purpose or methods of operations (also assuming there is no subsequent change in the law). In determining exempt status, the charter powers of the organization are usually considered controlling. An organization will not

be deemed to be organized for exempt purposes if its articles expressly empowers it to devote more than an insubstantial part of its activities in attempting to influence legislation by propaganda or otherwise (including the publishing or distributing of statements) or directly or indirectly participating in political campaigns. In addition, it will not be considered exempt if it engages in activities which characterize it as an "action" organization. An organization will be considered an "action" organization if:

(a) a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, it will be regarded as attempting to influence legislation (Federal, state or local) if the organization contacts or urges the public to contact members of the legislative body for the purpose of proposing, supporting or opposing legislation.

(b) it participates or intervenes directly or indirectly in any political campaign on behalf of or in opposition to any candidate for public office.

(c) its main or primary objective (as distinguished from its incidental or secondary

objectives) may be obtained only by legislation or the defeat of proposed legislation and it advocates, or campaigns for such primary objective as distinguished from engaging in comprehensive analysis study or research and making the results thereof available to the public.

The regulations issued by the Internal Revenue Service provide definitions of the various exempt purposes. A "charitable purpose" includes the advancement of education or science.

An "education purpose" includes the instruction of the public on subjects useful to and beneficial to the community. An organization may be educational in purpose even though it advances a particular view so long as it presents a sufficient full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational in purpose if its principal function is the mere presentation of an unsupported opinion.

An organization for a "scientific purpose" is one that is organized and operated in the public interest. Scientific research will qualify as being in the public

interest if;

(a) the results (including patents, copyrights or process of formula resulting from such research) are made available to the public on a non-discriminatory basis, or

(b) if the research is directed toward benefiting the public. Research is deemed to benefit the public if it is carried on for the purposes of obtaining scientific information which is published in publications, etc. or in any other form that is available to the interested public.

Proper scientific research also includes that which is carried on for the purpose of discovering a cure for a disease.

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